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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

SAMSUNG TELECOMMUNICATIONS)
AMERICA, INC.)

and)

SAMSUNG ELECTRONICS CO., LTD.)

Request for Temporary)
Relief Regarding)
911 Call Processing Methods)

CC Docket No. 99-328

To: The Chief, Wireless Telecommunications Bureau

REPLY COMMENTS

SAMSUNG TELECOMMUNICATIONS
AMERICA, INC., and

SAMSUNG ELECTRONICS CO., LTD.

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May 5, 2000

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SUMMARY

The Commission should grant the Request. As shown in the Request, a waiver of Section 22.911 would serve the public interest and none of the arguments made in the comments justify denial. The comments of the Wireless Consumer Alliance are replete with inaccuracies, irrelevancies and unsupported assumptions. Other arguments by commenters also must fail because they do not reflect the specific circumstances of the Request and the Commission's previous actions in granting waivers.

Since it filed the Request, Samsung has developed the necessary software modifications for its affected handsets, completed testing both in Korea and at Samsung's U.S. headquarters, and begun field testing the final version of the software. Samsung is completely on schedule and has no reason to believe that its implementation of the new software will run beyond the July 15, 2000 deadline it requested.

Grant of a waiver would be consistent with the public interest and previous Commission actions. In particular, it would not frustrate the purposes of Section 22.911 because the handsets manufactured and distributed pursuant to the special relief (1) would be sold to carriers with digital preferred services, so that the analog back-up capability would be rarely used; (2) provide the full functionality of digital call completion, which the Commission has found to be sufficient without analog back-up; and (3) represent only a small fraction of the handsets now in service without a prescribed analog E911 call completion methodology. Moreover, Samsung is taking appropriate remedial actions. Denying relief would contravene the public interest by disrupting the expansion of digital services and distorting competition among service providers. As a result, some would-be subscribers would have either no handset at all or a digital-only handset, which would be less effective in completing E911 calls than the affected Samsung handsets.

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REPLY COMMENTS

Samsung Telecommunications America, Inc. and Samsung Electronics Co., Ltd. (collectively, "*Samsung*"), by their attorneys, jointly submit this reply to the comments filed in response to their Request for emergency temporary relief in the above-referenced proceeding.¹ As shown in Samsung's initial filing, the Request is fully consistent with the standards for grant of a waiver. Indeed, as described in more detail below, Samsung's efforts to bring its handsets into compliance with Section 22.911 are meeting or exceeding the schedule described in the Request. Samsung has developed the necessary software modifications to implement the A/B-IR analog call processing method in its affected handsets, has completed its own laboratory testing

¹ "Comments Sought on Request for Emergency Temporary Relief from Wireless E911 Processing Rules By Samsung," *Public Notice*, DA 00-882 (released April 18, 2000).

program both in Korea and at Samsung's U.S. headquarters, has released a final version of the software; and Samsung's field testing has begun.

Moreover, none of the arguments made in the comments support denial of the Request. In particular, the comments of the Wireless Consumer Alliance, Inc. ("WCA") are replete with inaccuracies, irrelevancies and unsupported assumptions regarding the reasons why Samsung is seeking a waiver, the time necessary to produce compliant handsets and the number of handsets that will be produced. Other arguments made by commenters do not justify denial of relief, because they do not reflect the specific circumstances of the Request and the Commission's previous actions in granting waivers. Consequently, the Commission should grant the Request and waive Section 22.911 as to Samsung's handsets until July 15, 2000.

I. INTRODUCTION

Samsung notified the Commission on its own initiative immediately upon discovery that its multi-mode handsets used protocols for analog E911 call completion that did not fully comport with one of the Commission-approved methods for handsets manufactured after February 13. Promptly thereafter, on April 13, 2000, Samsung filed its Request.

As Samsung set forth in the Request, although its handsets are sold to digital-preferred carriers and typically operate in digital mode, they also have analog capabilities, which are used as a back-up for dialing 911. These analog capabilities, although more than required for digital-only handsets, did not comport precisely with the analog E911 connection methods approved by the Commission under Section 22.911. Because Samsung incorrectly understood the rule to apply only to handsets *authorized* after February 13 rather than *manufactured* after February 13,

it did not change its methodology for already-authorized handsets, but planned to implement the Automatic A/B-IR method approved by the Commission in handsets authorized after that date.²

As the Request explained, grant of a waiver is supported on several grounds, including that grant of the waiver would not frustrate the purposes of the rule because (1) Samsung's carrier customers sell the handsets in conjunction with digital preferred services in which the analog back-up capability would be rarely used; (2) the handsets provide the full functionality of digital call completion, which the Commission has found to be sufficient without analog back-up; and (3) the handsets that Samsung would manufacture and distribute pursuant to the special relief would represent only a small fraction of the handsets now in service that do not follow a prescribed analog E911 call completion methodology. Furthermore, denial of the waiver would be contrary to the public interest because it would disrupt the expansion of digital services and create distortions in wireless service competition in view of the recognized existing shortages of digital handset equipment. Denial of the waiver thus could cause some would-be subscribers to have either no handset at all or to have a digital-only handset, which would be less effective in completing E911 calls than the affected Samsung handsets.

In addition, Samsung proposed specific measures for mitigation and an aggressive schedule for bringing its handsets into full conformance. While the schedule for compliance proposed in the Request was aggressive, Samsung is pleased to report that it is fulfilling these expectations. Samsung is completely on schedule and has no reason to believe that its

² As described in the Request, the affected handsets are those sold under model numbers SCH-411, SCH-2500, SCH-3500, SCH-8500 and SCH-850. No other handsets are subject to the waiver request. Contrary to the suggestion of WCA, Samsung does not manufacture handsets to be sold under any other brand name and, thus, no other brand of handsets is subject to the Request. WCA Comments at 2, n. 4 (suggesting that Samsung might manufacture handsets under the "Audiovox" or other names).

implementation of the new software will run beyond the July 15, 2000 deadline it requested. Software development already has been completed and the software has been laboratory tested both in Korea and in the United States. A final version of the software now has been released and Samsung has begun its own field testing. Once this testing is completed, final testing to confirm compatibility with carrier systems will begin with the cooperation of Samsung's carrier customers. Thus, Samsung already has accomplished most of the tasks required under the software development program in significantly less time than WCA estimated.

This aggressive schedule was possible because Samsung already had incorporated an improved 911 call completion methodology that nearly met all the Commission's specifications for the Automatic A/B-IR method in its digital handsets with analog backup *before the Commission adopted its E911 Rules*. Thus, only minor software changes are necessary for *full* compliance with Section 22.911. In addition, and consistent with Samsung's previous understanding of the rule, Samsung already was developing an Automatic A/B-IR mechanism compliant with Section 22.911 for handsets to be submitted for authorization after February 13, 2000. Samsung's expedition is a result of its prior efforts to enhance 911 connectivity and Samsung's devotion of extraordinary resources to this project. Indeed, Samsung's engineers have been working night and day to make and test the necessary software modifications.

II. THE RECORD DEMONSTRATES THAT COMMISSION SHOULD GRANT THE WAIVER

A. Samsung's Non-Compliance Resulted from an Error in Its Understanding of the Rules.

WCA curiously asserts that Samsung's explanation for its failure to discover before February 13, 2000 that modifications to its current call completion method were necessary "rings

hollow,” because Samsung “should have known and is responsible for knowing” the Commission’s Rules.³ WCA misses the point. Samsung never has denied that it should have understood the E911 requirements better. Indeed, the Request specifically describes the measures Samsung is adopting to reestablish its otherwise excellent record of compliance with the Commission’s rules, including the establishment of a regulatory resource in the United States. Moreover, Samsung has derived no benefit from its erroneous interpretation of the rule and, as Samsung’s earlier record attests, noncompliance certainly is contrary to Samsung’s policy. But for its misunderstanding of the rule, Samsung would have been in full compliance with the E911 requirements as of the February 13 deadline. WCA’s disbelief of Samsung’s explanation is not a reason to deny the waiver, and nothing in WCA’s comments provides any reason to doubt Samsung’s explanation.

In particular, WCA’s claim that Samsung was put on notice of the new rule during the most recent CTIA convention (February 28 to March 1, 2000) is meritless. WCA alleges that its representatives visited Samsung’s booth at the convention and told Samsung that tests would be run on Samsung’s handsets. By its own admission, WCA did not explain the E911 rules to Samsung or any other vendor.⁴ As a result, even if WCA representatives did mention WCA’s intent to run tests, this would not have been sufficient to put Samsung on notice that its handsets were non-compliant. WCA’s test warning alone would not have prompted Samsung, which at that time believed it was in compliance with the Commission’s requirements, to revisit its interpretation of the *E911 Second Report and Order*. In fact, even if the WCA representatives

³ WCA Comments at 2-3.

⁴ It is common knowledge that exhibiting manufacturers’ booths typically are not staffed by engineering and legal personnel. WCA could not have expected any of its discussion with the booth staff to be relayed to Samsung’s management.

had informed Samsung of the substance of Section 22.911 during the convention, that warning would have been made *after* the February 13 compliance deadline and Samsung still would have had to seek a waiver.

B. Samsung's Request Meets the Commission's Requirements for Temporary Relief.

1. Grant of This Request Would Not Frustrate the Purpose of the Rule.

In its Request, Samsung acknowledged that the requirements in the E911 processing orders apply to all multi-mode handsets without regard to design or purchaser.⁵ Contrary to the assertions of the National Emergency Number Association ("*NENA*"), Samsung does not seek an exception to the E911 rules on the ground that the special features of its multi-mode handsets should shelter them from the application of the Commission's Rules.⁶ Instead, Samsung requests an extension of the deadline to implement the necessary changes to its existing analog E911 call completion methodology to comply *fully* with the requirements of Section 22.911. Samsung is not seeking a long-term or permanent waiver and there is little risk of further delay, as shown above.

In the context of a waiver, the Commission appropriately considers the effect on the public of a grant of a waiver request. In this regard, because Samsung's affected handsets are sold to carriers with digital preferred service, there is no significant likelihood of harm to the public. As described in Samsung's Request, the primary use of Samsung's handsets is in the digital context, in which preferred digital service providers provide the connection.⁷ All-digital handsets with no analog capability at all would meet the Commission's E911 requirements

⁵ See Samsung Request for Emergency Temporary Relief, at 15.

⁶ NENA Comments at 2.

standing alone. Samsung's affected handsets provide the same functionality in completing E911 calls digitally and, in addition, provide analog back-up. The likelihood that Samsung's handsets have to rely on their back-up analog system is very small; but if they should, then, contrary to WCA's theories, the handsets do include a mechanism for E911 call completion in the analog mode, just not with a methodology that fully comports with one of the alternatives specified by the Commission. Thus, it is patently obvious that in an actual emergency a subscriber would have greater likelihood of completing an E911 call with one of the affected Samsung handsets than with a digital-only handset. Simply put, the only reason this waiver is necessary is that Samsung's existing analog 911 call completion methodology does not comply precisely with one of the methods approved under the Commission's Rules.

In addition, the number of handsets Samsung would need to sell during the waiver period to meet its existing contractual commitments is far less than the grossly overestimated number suggested by WCA. Although WCA does not explain how it made its calculations, it is evident that WCA failed to take into account the rolling implementation Samsung proposed in its request, Samsung's overall position in the U.S. wireless handset market and the seasonality of demand for handsets.⁸ In fact, although Samsung is a large manufacturer of CDMA handsets, it accounts for only about four percent (4%) of the overall wireless handset market in the United States. Compared to the waivers granted to Samsung's larger competitors, this waiver will result in relatively few additional non-compliant handsets being manufactured and sold in the United

⁷ See Samsung Request at 11-13.

⁸ Samsung proposed to implement production of modified units on a carrier-by-carrier basis and model-by-model basis. Samsung also proposed to automatically upgrade every multi-mode handset sent back for repairs requiring software modifications, unrelated to E911 matters, regardless of whether the handset sent for repair was manufactured before or after February 13, 2000. See Samsung Request For Emergency Temporary Relief, at 20.

States after the February 13 deadline.⁹ In addition, because of Samsung's repair and upgrade policy, the number of Samsung handsets circulating on the U.S. market without a Commission-approved analog E911 processing method will even decrease over time.¹⁰

2. Samsung's Waiver Request Does Not Differ Materially from Those the Commission Previously Has Granted.

Both NENA and WCA argue that the circumstances under which the Commission granted waivers to Nokia, Motorola and Ericsson are not present in Samsung's case because (i) Samsung seeks permission to offer the approved A/B-IR methodology rather than a call completion methodology different from the pre-approved methodology – a circumstance that would require additional time for implementation; and (ii) Samsung requests an extension of the deadline for manufacturing handsets without an FCC-approved analog E911 call completion methodology, not for the manufacture and software integration of handsets complying with an alternate method.¹¹ WCA claims that none of the manufacturers who requested waivers manufactured handsets that did not meet analog E911 call completion methodology under Section 22.911 of the Commission's Rules.

These arguments reflect a misunderstanding of the prior waivers granted in the E911 proceeding. By granting each of Ericsson, Nokia and Motorola extensions of time to comply with Section 22.911, the Commission automatically authorized them to produce and market handsets that were not in compliance with the E911 requirements during the waiver period. The

⁹ See "Booming Wireless Sector Still Has Plenty of Room for Growth," *The Kansas City Star*, February 21, 2000 ("The handset market is dominated by companies such as Nokia, Ericsson and Motorola.")

¹⁰ See Samsung Request at 20.

¹¹ NENA comments, page 3.

authorization to manufacture non-compliant handsets was justified by the need not to “disrupt handset production and competition at a time when demand for handsets continues to grow strongly.”¹² Based on the respective market shares of these manufacturers, these waivers allow many more non-compliant handsets to be sold in the United States than would be permitted under this waiver.

Except for the timing of the request, the circumstances surrounding Samsung’s request do not differ materially from those in prior waiver requests that the Commission has granted. Samsung seeks temporary relief while adapting the 911 call completion method it developed and implemented before any call completion requirements were in place, because some minor changes are necessary for this software to come fully in compliance with the *E911 Second Report and Order* requirements. Other manufacturers have taken similar approaches with their E911 call completion technologies after discovering that their software implemented approaches were slightly different from the ones approved by the Commission. Thus, the Request is consistent with the waivers previously granted by the Commission.

3. Denial of the Request Would Be Contrary to the Public Interest.

Their rhetoric aside, commenters made no serious efforts to dispute that the grant of a waiver would be consistent with the public interest.¹³ Denial of the waiver would likely disrupt

¹² Ericsson Waiver Order at ¶ 7 and Motorola Waiver Order at ¶ 4. Motorola’s last request for a waiver to comply with Section 22.911 leaves no doubt about the result sought by any Section 22.911 waiver, *i.e.* the authorization to manufacture additional non-compliant units. *See* Motorola Request For Extension of Deadline to Comply With Enhanced Call Completion Requirements, WT Docket No. 99-328, March 24, 2000.

¹³ WCA incorrectly claims that Samsung attempted to avoid the requirements of the Commission’s waiver rules by filing the Request pursuant to Section 1.41 of the Commission’s rules. WCA Comments at 4. Indeed, the Request specifically cites and addresses the requirements for a waiver. *See* Request at 9.

the supply of digital handsets, to the detriment of Samsung's carrier-customers and wireless consumers.

Samsung holds a relatively small share of the overall U.S. wireless handset market, but it is one of the leading manufacturers of handsets incorporating CDMA technology. Overall, Samsung holds about twenty percent (20%) of the CDMA wireless handset market in the United States.¹⁴ Given this significant share of the CDMA market, other manufacturers may not have the capacity to fulfill the subscriber demand for CDMA wireless phones that would be unsatisfied if Samsung's request for relief were denied.¹⁵

WCA and NENA ignore the significant public policy concerns that denial of the Request would raise. If carriers cannot meet customer demand, competition in digital-preferred services will be harmed and consumers will be harmed because of their inability to obtain wireless service from the carrier of their choice. In fact, in the Ericsson and Motorola waiver orders, the Commission specifically recognized that the authorization to manufacture non-compliant handsets was justified by the need not to "disrupt handset production and competition at a time when demand for handsets continues to grow strongly."¹⁶

¹⁴ Samsung's total share of the U.S. wireless markets, all technologies included, is about four percent (4%).

¹⁵ See "Wireless Devices Too Popular For Their Own Good – Component Shortage Could Hurt Business at Motorola and Palm and Cause Prices to Rise," *Information Week*, April 17, 2000. ("The booming market for mobile technology is creating shortages in the components that power everything from cell phones to palmtops. Last week, mobile hardware vendors Motorola, Inc. and Palm, Inc. warned that components constraints could limit their ability to fulfil orders.") Even if other vendors could increase their CDMA handset production, they would have to undergo the carrier's qualification process before their handsets could be sold for use on the carrier's system. This process typically takes several months

¹⁶ Ericsson Waiver Order at ¶ 7 and Motorola Waiver Order at ¶ 4.

WCA's suggestion that the Commission deny the Request and leave it to Samsung to deal with the ramifications ignores substantial public interest concerns. Samsung's suspension of production and sales of its digital handsets with analog backup capability would cause potential public harm because the demand of subscribers for the dual-mode handsets that could prove so helpful in emergency situations would no longer be met. These considerations are far more significant than the contractual issues WCA and NENA raise.

C. Samsung Has Committed to Taking Reasonable Measures to Mitigate Any Non-Compliance.

As described in its request and above, Samsung has engaged in an expedited program to bring its handsets into compliance and taken measures to strengthen its compliance program on a going-forward basis. It also has agreed to roll out compliant handsets as soon as any model is accepted by any carrier and to upgrade the software in handsets returned for software-related repairs – measures which other manufacturers have not offered or been asked to take.¹⁷

Even though Samsung's remedial proposals go beyond anything undertaken to by other manufacturers that have obtained waivers, they are not enough for WCA. There is no basis for adopting the other measures that WCA suggests, however. Samsung's deviations from the rules are minor, temporary and pose no risk of harm to the public. Most existing handsets already on the market raise the same E911 issues, yet the Commission took no step to reduce their number.¹⁸ Samsung reported this discrepancy on its own initiative and is taking all the steps necessary to remedy its non-compliance. It already has provided notice to its carrier customers

¹⁷ See Samsung Request, at 19-20.

¹⁸ Particularly given the Commission's willingness to allow tens of millions of non-compliant telephones to remain in the marketplace under its initial rules and previously granted waiver requests, there is no legal or policy basis to initiate a recall.

of this matter and of the field testing for which Samsung needs carriers' cooperation. Samsung's series of remedial measures demonstrates that its handsets soon will no longer raise any E911 compliance issue. Thus, there is no basis to impose any additional conditions on the grant of the requested waiver of Section 22.911.

III. CONCLUSION

For all the reasons stated above and in Samsung's original Request, the Commission should expeditiously waive compliance with Section 22.921 and grant Samsung emergency temporary authority to manufacture handsets incorporating its current 911 call completion method until July 15, 2000, and to distribute them in the United States.

Respectfully submitted,

**SAMSUNG TELECOMMUNICATIONS
AMERICA, INC. and**

SAMSUNG ELECTRONICS CO., LTD.

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May 5, 2000

CERTIFICATE OF SERVICE

I, Tracie R. Watts, a legal secretary for Dow, Lohnes & Albertson, hereby certify that on this 5th day of May 2000, I caused to be served by hand delivery, except where indicated, by first class mail, a true copy of the foregoing **Reply to Opposition to Request for Emergency Temporary Relief**, upon the following:

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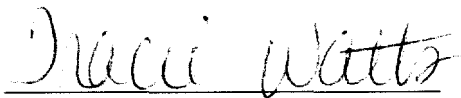
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